

CHAPTER 8  
LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

[Prior to 5/20/87, see Aging, Commission on the[20] rules 4.2 and 9.6]

**321—8.1(231) Purpose.**

**8.1(1) General rule.** The department shall operate a statewide long-term care resident's advocate/ombudsman program in cooperation with appropriate state and local agencies such as the office of the citizen's aide/ombudsman, the Iowa department of public health, the department of inspections and appeals, the Iowa department of human services and the AAAs.

**8.1(2) Care review committee program administration.** The program shall include the administration of the care review committee program identified in Iowa Code section 231.4.

**321—8.2(231) Long-term care resident's advocate/ombudsman duties.**

**8.2(1) Program administration.** The department shall employ an individual (hereinafter called the resident's advocate/ombudsman) to administer the long-term care resident's advocate/ombudsman program in accordance with the requirements of the Act and Iowa Code chapter 231.

**8.2(2) Duties of the resident's advocate/ombudsman.** The resident's advocate/ombudsman shall perform the following duties:

- a. Investigate and resolve complaints and grievances that may adversely affect the health, safety, welfare or rights of residents;
- b. Administer the care review committee system pursuant to these rules and assist the committees in the performance of their duties through training and technical assistance;
- c. Monitor the development and implementation of federal, state and local laws, regulations and policies that relate to long-term care facilities;
- d. Provide information to the public and to state and local agencies about problems of persons in long-term care facilities;
- e. Train long-term care facility staff in conjunction with training provided to care review committee members;
- f. Assist in the development of organizations to participate in the long-term care resident's advocate/ombudsman program; and
- g. Comment and make recommendations on administrative actions under consideration by an agency or authority which may affect residents in long-term care facilities.

**321—8.3(231) Access requirements.** The resident's advocate/ombudsman shall have access to long-term care facilities, private access to residents, access to the personal and medical records of residents and access to other records maintained by the facilities or governmental agencies or their agents, pertaining to the complaint(s) being investigated.

**8.3(1) Visits to facilities.** The resident's advocate/ombudsman may enter any long-term care facility without prior notice. After notifying the person in charge of the facility of the resident's advocate/ombudsman's presence, the resident's advocate/ombudsman may communicate privately and without restriction with any resident who consents to the communication.

**8.3(2) Visits to resident's living area.** The resident's advocate/ombudsman shall not observe the private living area of any resident who objects to the observation.

**8.3(3) Restrictions on visits.** The facility staff member in charge may refuse or terminate a resident's advocate/ombudsman's visit with a resident only when written documentation is provided to the resident's advocate/ombudsman that the visit is a threat to the health and safety of the resident. The restriction shall be ordered by the resident's physician and the order shall be documented in the resident's medical record.

**8.3(4) Request agency assistance.** The resident's advocate/ombudsman may request cooperation, assistance and data that will enable the resident's advocate/ombudsman to execute any of the resident's advocate/ombudsman's duties and powers under the Older Americans Act from any governmental agency or its agent or AAA.

**8.3(5) *Copies of medical and personal records.*** All medical and personal records maintained by a facility shall be confidential and shall not be available for copying by the resident's advocate/ombudsman except under the following circumstances:

a. The information is requested by the resident's advocate/ombudsman who provides the facility with a written waiver signed by the person about whom the information is sought, the person's guardian, conservator, legal representative or responsible party, as defined under rule 470—58.1(135C), Iowa Administrative Code. Each signed consent shall designate specifically the person or agency to whom the information is to be provided, and the information shall be provided only to that person or agency; or

b. The information is sought by a court order.

**8.3(6) *Records needed to resolve complaints.*** Except as limited by subrule 8.3(5), the resident's advocate/ombudsman may review and copy any files or other records of a long-term care facility, or of any government agency pertaining to the care of residents that may be considered necessary to the resident's advocate/ombudsman for the resolution of a complaint.

### **321—8.4(231) Authority and responsibilities of the department.**

**8.4(1) *Confidentiality and disclosure.*** The complaint files maintained by the resident's advocate/ombudsman program shall be maintained as confidential information and may not be disclosed unless the resident's advocate/ombudsman authorizes disclosure.

a. The resident's advocate/ombudsman shall not disclose the identity of any complainant or resident, or any identifying information obtained from a resident's personal or medical records unless the complainant or resident, or the legal representative of either, consents in writing to the disclosure and specifies to whom the information may be disclosed.

b. The resident's advocate/ombudsman may use materials in the files for the preparation and disclosure of statistical, case study and other pertinent reports provided that the means of discovering the identity of particular persons is not disclosed.

**8.4(2) *Referral of complaints or grievances.***

a. When the resident's advocate/ombudsman encounters facts which may indicate the failure to comply with state or federal laws or regulations, the resident's advocate/ombudsman shall refer the case to the appropriate agency.

b. When the resident's advocate/ombudsman encounters facts that may warrant the institution of civil proceedings, the resident's advocate/ombudsman shall refer the case appropriately for administrative and legal assistance.

c. When the resident's advocate/ombudsman encounters facts which may indicate the misconduct or breach of duty of any officer or employee of a long-term care facility or government agency, the resident's advocate/ombudsman shall refer the case to the appropriate authorities.

d. The resident's advocate/ombudsman program shall initiate follow-up activities on all referred complaints and grievances.

**8.4(3) *Reporting.*** The resident's advocate/ombudsman program shall maintain a statewide, uniform reporting system to collect and analyze information on complaints and grievances in long-term care facilities in accordance with requirements of the Act and Iowa Code section 231.4.

a. Information provided by the department of inspections and appeals, individuals and agencies to whom cases were referred, and care review committees shall be used in the reporting system.

b. No information from this reporting system that threatens the confidentiality of residents or complainants shall be made public without the written permission of affected residents or complainants.

c. Any information from this reporting system which identifies a specific facility shall state that problems identified in that facility have been corrected, if problems identified have been corrected to the satisfaction of the resident's advocate/ombudsman and the department of inspections and appeals.

d. The complaint and grievance documentation and reporting system shall include, where available:

(1) The source and date of the complaint or grievance;

- (2) Name, location and type of facility;
- (3) Facility licensure and certification status;
- (4) Description of the problem;
- (5) Billing status of the resident;
- (6) Method by which the complaint was received; and
- (7) Description of follow-up activities and date of resolution.

*e.* The resident's advocate/ombudsman program shall prepare an annual report analyzing the complaint and statistics collected and provide this report, by January 15 of each year, to AOA, the office of the governor, the general assembly of Iowa, the Iowa department of inspections and appeals, the Iowa department of human services, and AAAs.

These rules are intended to implement Iowa Code chapter 231.

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